



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Fritig *et al.*

Serial No. : 09/937,204 Examiner: Ibrahim, M.

Filed : December 13, 2001 Group Art Unit: 1638

For : INDUCIBLE COMTII PROMOTER, CHIMERA GENE
CONTAINING SAME AND TRANSFORMED PLANTS**RESPONSE TO RESTRICTION REQUIREMENT**

I hereby certify that this paper is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

July 23, 2003

Date of Deposit

Rochelle K. Seide
Attorney NameRochelle K. Seide
Signature32,300

PTO Registration No.

July 23, 2003

Date of Signature

Assistant Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Restriction Requirement dated May 21, 2003, please consider the following remarks. Applicants submit herewith a Petition to Extend Time for Applicant's response for a period of two months, up to and including August 21, 2003, and accordingly enclose a check in the amount of \$410.00 as required under 37 C.F.R. § 1.17(a)(2) for a non-

small entity.

The Examiner asserts that pending Claims 1-32 comprise two distinct inventions, grouped as follows:

Group I: Claims 1-16 and 24-32, drawn to a nucleic acid fragment comprising a COMT II promoter including SEQ ID NO:1 or fragments thereof, a chimeric gene comprising said promoter operably linked to a coding sequence and a 3' regulatory sequence, an expression vector comprising said chimeric gene, and a method for transforming plant cells with said chimeric gene and plant/grain comprising said transformed cells, class and subclass unspecified; and

Group II: Claims 17-32, drawn to a chimeric gene comprising a coding sequence for an elicitor, including SEQ ID NO:13 and 14, operably linked to a promoter, expression vector comprising said chimeric gene, a method for transforming plant cells with said chimeric gene, and plants and grains comprising said transformed cells, class and subclass again unspecified.

The Examiner indicates that Groups I and II are distinct because they lack the same or corresponding special technical features. Specifically, the Examiner indicates that the chimeric gene of Group I requires the COMT II promoter with any coding sequence, while the chimeric gene of Group II requires the coding sequence for a fungal elicitor with any promoter.

Although they disagree with the Examiner's conclusion that the claims as filed lack a corresponding technical feature, in the interest of furthering the prosecution of this case, Applicants elect to pursue in this application the invention of Group I, which comprises Claims 1-16 and 24-32 as they relate to chimeric genes comprising a COMT II promoter

operably linked to a coding sequence and a 3' regulatory sequence, expression vectors containing said chimeric gene, a method for transforming plant cells with said chimeric gene, and plants and grains comprising said transformed cells.

This election is made without traverse, and without prejudice to the prosecution of the subject matter of the non-elected groups in other patent applications.

Applicants believe that a fee of \$410.00 is due for a two-month extension of time through August 21, 2003 under 37 C.F.R. § 1.17(a)(2). Should any additional fees be required in connection with this response, or should any overpayment be made, the Commissioner is hereby authorized to charge and required fees or credit any overpayments to Deposit Account Number 02-4377. A duplicate copy of this communication is enclosed.

Respectfully submitted,

BAKER BOTTS L.L.P.



Bradley B. Geist
Patent Office Reg. No. 27,551

Rochelle K. Seide
Patent Office Reg. No. 32,300

Attorneys for Applicants
30 Rockefeller Center, 45th floor
New York, NY 10112
(212) 408-2500